adopted in its broadcast and cable attribution rules a certification/disclaimer process concerning when an interest should be attributed to an officer or director. The Commission exempts from its attribution rules officers and directors whose "duties and responsibilities are neither directly nor indirectly related to the activities of any broadcast licensee in which their corporation has a cognizable interest;"[54] however, it imposes a requirement on the licensee to submit specific information concerning an officer's or director's relationship with the licensee. In so doing, the Commission found that this was "an efficient way of handling the matter that will avoid the administrative burdens and delays that use of an individual waiver approach would entail."[55]

Similarly, the Commission's insulated limited partner attribution exemption imposes requirements on the content of the

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programming if it won the proxy vote, the Commission emphasized that the minority shareholders "represented that" they would "make no changes in the day-to-day corporate policies and management") ("Storer Communications"); KCOP Television, Inc., *Memorandum Opinion & Order*, 71 F.C.C.2d 1430 (1979) (in reviewing the application for renewal of KCOP's license, and in denying a claim that the multiple ownership rules had been violated by KCOP's parent, Chris-Craft (because of its interests in both KCOP and 20th Century Fox), the Commission relied, in part, on Chris-Craft's denial of an intent to seek control of Fox. "Chris-Craft's behavior with regard to Fox, coupled with its disclaimer of any intent to seek control, indicates that complainant's [Fox] concerns are entirely speculative." 71 F.C.C.2d at ¶ 32 (emphasis added); id. at ¶ 28 ("[Fox] now concedes that Chris-Craft has unequivocally denied any intent to acquire control of it, and this denial obviates the alleged need for a transfer of application").

54 1984 Attribution Order, at ¶ 59.

55 Id.

limited partnership agreement and reporting requirements on the regulated entity. Licensees and cable operators are permitted to make a "certification necessary to exempt the specific partners who meet [the] 'no material involvement' standard,"[56] i.e., that the limited partner is restricted from participating in the day-to-day operations of the licensee, the ability to provide services to the licensee, and other activities that allow the partner to exert influence on the operation of the station.[57] The Commission found "that the inclusion of the above restrictions in the limited partnership agreement. . . provide sufficient insulation to permit the licensee or cable television system to certify that the limited partner could not be involved in any material respect in the management or operation of the business."[58]

2. The Self-Certification Process Provides An Appropriate Means Of Ensuring Compliance With The Commission's Rules.

The Commission's current processes provide sufficient means to ensure compliance with its horizontal ownership restriction. Given a cable operator's ongoing duty to file truthful written statements before the Commission,[59] the Commission has the ability to punish

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56 1985 Broadcast Attribution Order, at ¶ 47.

57 Id. at ¶¶ 48-50.

58 Id. at ¶ 50.

59 See 47 C.F.R. § 1.17 (requiring truthful written statements by applicants, permittees and licensees in responses to Commission inquiries and correspondence). This duty applies today to cable operators by virtue of the CARs, earth station and other licenses held by cable operators.

misleading or untruthful certifications.[60] A self-certification requirement on the minority interest holder preserves the Commission's ability to ensure that its rules and policies are being followed.

C. "Influential," As Opposed To Controlling, Interests Should Not Be Considered Relevant For Purposes Of The Cable Horizontal Cap.

The Commission traditionally has defined "influence" as "'an interest that is less than controlling, but through which the holder is likely to induce a licensee or permittee to take actions to protect the investment.'"[61] As its definition conveys, the concept of influence is highly ephemeral and elusive. For the following reasons, explained more fully below, TCI urges the Commission not to adopt such an approach, particularly in the context of the cable horizontal cap:

- The history of the broadcast attribution standards reveals that the Commission's struggle with influence has led to inefficient, costly regulation, based upon goals not relevant to the cable industry; and

- The concerns the Commission has identified as justifying the horizontal limit can be addressed with less stringent attribution requirements.

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[60] Storer Communications, at ¶ 37 (In reviewing whether a group of minority shareholders seeking to vote in a new board of directors for Storer Broadcasting engaged in a transfer of control by soliciting proxies from the other shareholders, the Commission relied "on the accuracy of the information submitted, the certifications made as to that information, and the substantial penalties that can be imposed for misrepresentations") (emphasis added).

[61] See CMRS Spectrum Cap Order at ¶ 118 (citing Broadcast Attribution Notice, 10 FCC Rcd. at 3609-10 (citing 18 FCC Rcd. 288, 292-293)).

On balance, an attribution standard based on operational control is the least restrictive, most efficient alternative, particularly given that the Commission's experience in trying to prevent influential interests has been less than successful, that the potential for harm to competition and diversity is minimal, and that the costs of other regulatory alternatives to operational control outweigh potential benefits.

1. The History Of Broadcast Attribution Demonstrates That Regulating Potentially Influential Ownership Interests Is Particularly Costly And, Moreover, Not Relevant To The Horizontal Limit.

Resolving an attribution issue is no simple matter; Commission precedent illustrates this point clearly.[62] This is because, among other things, many factors affect whether a particular interest or combination of interests provides sufficient influence or control such that monopsony or foreclosure concerns are potentially implicated.[63] These factors include, among other things, the size

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[62] See, e.g., Broadcast Attribution Notice, at ¶ 16 (The Commission recognized "that any specific benchmark or limit" that it adopted would "not include every influential interest that might be limited by the multiple ownership rules." It recognized that certain holdings, even though not cognizable under the rules "may, in the context of the structure of a particular business, including the relative distribution of ownership interests in that company, permit a degree of influence or control that should be regulated . . . On the other hand, a rule of general applicability drawn so strictly as to include every possible influential interest would ensnare innumerable interests that have no ability to impart influence or control over a licensee's core decision-making process to their holders.")

[63] CRA Attribution Analysis at 5. To illustrate, an influential interest only permits partial control, and "the extent of control of any individual owner depends on the magnitude of its interest, the magnitude of the interests of other large investors, and the source of profits of other large investors. Control of the firm is indirect, because it relies on managers

of the financial interest, the competitive significance of the investor, and the competitive significance of the cable company in which the investment has been made.[64]

As explained by CRA:

> Whether a minority financial interest is controlling or silent requires additional scrutiny, such as an evaluation of size and significance of other shareholder interests, the composition and terms of the Board of Directors, identification of who has responsibility for hiring, firing and compensating management, and identification of covenants that restrict control. The power of a large minority shareholder may be limited by other large minority shareholders, or by a coalition of smaller shareholders.[65]

Thus, CRA concludes, "in many circumstances, the size of the financial interest will be a highly imprecise indicator of the extent to which the financial interest conveys control."[66]

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having the incentives to serve the interests of large investors without explicit direction. However, partial control may be limited by the threat of shareholder suits that might arise if the managers must trade off gains to some shareholders against losses to others. The more conflicting the ownership interests, the more likely management is to focus on maximizing the value of the firm as a stand-alone entity." Id. at 7. This account makes clear that determining the extent to which an interest conveys influence and the extent of influence requires a fact-intensive assessment.

64 CRA Attribution Analysis at 5-6.

65 Id. at 8. As CRA further illustrates: "[a]n investor with a 51% ownership interest may lack effective control over the system because, e.g. there are covenants that insulate the system's management. In addition, if the majority owner were to take actions that increased its profits at the expense of other investors in the system, the directors of the acquired system may be subject to shareholder suits for violating their fiduciary responsibilities to other shareholders. The threat of such suits may limit even the effective control of an investor with a majority interest." Id.

66 Id.

The Commission also has acknowledged that ascertaining whether a partial interest conveys sufficient influence or control to be of concern is problematic, at best. When adopting an attribution standard to implement the "seven station rule," the Commission reasoned that:

> [w]hile the holder of a small interest in many instances may have slight influence on the operation of a station in question, it is also true such a person can exert a considerable influence--to an extent clearly within the objectives and purview of the described diversification policy. Several factors should be noted here: (1) there may not be a correlation between the size of a minority holding and the extent of the influence wielded; (2) it is impossible to determine on the face of the application what the influence of the multiple owner will be; indeed, it may be difficult or incapable of definite ascertainment even in a subsequent hearing; and (3) in the case of a holder who has interested himself in numerous stations, his influence will tend to be a positive or substantial one.[67]

In other words, determining whether a partial, potentially influential ownership interest implicates the concerns underlying the multiple ownership rules is simply difficult.

The Commission's response to this difficulty appears to have taken two extremes: for national broadcast ownership issues it adopted a one percent stock ownership threshold that attributed almost all ownership, whether beneficial or harmful;[68] for local broadcast ownership issues it adopted a costly case-by-case approach to influence issues with the development of the cross-interest policy.[69]

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67 <u>Amendment of Sections 3.35, etc.</u>, 18 F.C.C.2d 288, at ¶ 12 (1953) (emphasis added).

68 This one percent limit remained applicable to all stock ownership interests, but for passive interests, until 1984.

69 This case-by-case approach is most recently exemplified by the equity-debt plus proposal. <u>See, e.g.</u>, <u>BBC License Subsidiary</u>

The one percent ownership threshold adopted in 1953 essentially attributed all ownership interests. This decision attributed interests that did not pose any threat to the underlying purposes of the multiple ownership rule and, therefore, inhibited beneficial investments. These beneficial investments were effectively sacrificed in order to avoid harm to diversity and competition.

This sacrifice was deemed necessary because of the particular circumstances of the broadcast industry at that time. In 1953, TV and FM were still in their infancy. There were only 96 fully licensed television stations, 30 of which were controlled by six group owners, and most FM stations were operated as part of FM-AM combinations.[70] The programming of AM stations was relatively concentrated, as national networks "played a major role in the service through program distribution and through their ownership of

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L.P. (Assignor) and SF Green Bay License Subsidiary, Inc. (Assignee), *Memorandum Opinion and Order*, 10 FCC Rcd. 7926, 7937 (1995) (Separate Statement of Commissioner Ness) (advocating an examination of the "entire web of relationships," including 45% of the cash equity investment, 25% nonvoting stock, options to increase share to 50% and to convert to voting stock, contractual affiliations, approval rights over major licensee decisions, key employee relationships, etc. to establish the "potential to influence," and notes the inconsistency associated with the current rules' nonattribution of each of these interests considered separately, yet automatic attribution "if the sole relationship were ownership of five percent of the licensee's voting stock!").

[70] Multiple Ownership of AM, FM and Television Broadcast Stations, Gen. Docket No. 83-1009, *Notice of Proposed Rule Making,* 95 F.C.C.2d 360, at ¶ 26, n.56 (1983).

a significant number of the Class I-A 'clear channel' stations."[71] Thus, the Commission's treatment of any ownership interest as a controlling interest flowed from the perceived need for such attribution in light of the particular industry concentration facts then present. As demonstrated below, the Commission's 1953 decision to attribute all interests is manifestly overbroad.

The Commission's alternative approach to address ownership interests with the potential to influence was to analyze such concerns on an ad hoc basis. To illustrate, the cross-interest policy was designed to address potentially influential ownership interests. Rather than prohibiting interests outright, the policy "required an ad hoc determination regarding the nonattributable interests at issue in each case."[72]

Case-by-case determinations, though, are costly.[73] Indeed, particularized assessments involving the normal administrative law procedural requirements, due process obligations, and public participation opportunities are slow and expensive. In other words, these types of inquiries carry significant costs, both in terms of the direct costs associated with making individualized

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71 See id.; see also Misregulating Television, supra, at 8 (No television networks existed since 1957 that "approached ABC, CBS and NBC in income, profits, length of schedule, or numbers of viewers reach." In television's early stages, NBC was established before CBS, and they were both substantially more powerful than ABC early on.

72 Broadcast Attribution Notice, at ¶ 79.

73 CMRS Spectrum Cap Order, at ¶ 120 ("[e]stablishing a control test would require us to conduct frequent case-by-case determinations of control, which are time-consuming, fact-specific, and subjective.")

determinations, as well as those imposed generally when the Commission fails to establish bright-line criteria.

Neither approach is appropriate for the purposes of the cable horizontal limit.

Moreover, the Commission's concern regarding "influence" in the broadcast context generally ran to issues not applicable to cable, for example, the prevention of collusion and other anti-competitive practices in local markets.[74] The "cross interest" policy demonstrates this point. "The cross-interest policy was developed with respect to the local ownership rules to address the competitiveness and diversity concerns created when a single entity held these types of otherwise permissible interests in two (or more) competing outlets in the same market."[75] Thus, the major concern underlying the cross-interest policy (a broadcast policy) was the risk of collusion, and therefore the risk to competition in

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74 See, e.g., Comments of CBS Corporation at 8; Comments of NBC at 11 in 1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35 (filed Jul. 21, 1998) (the broadcast national ownership limit is not relevant to competition and diversity in markets that are local in geographic scope).

75 Broadcast Attribution Notice, at ¶ 78; see United Community Enterprises, Inc., 37 F.C.C.2d 953, at ¶ 4 (1972) (the "cross interest policy is a principle which was not contained within the language of the [duopoly] rule but which the Commission enunciated as supplemental policy for the purpose of carrying out the objectives of the rule."); id. at ¶ 7. (The policy establishes that "in the interest of insuring arm's length competition among broadcasters and diversity of effect on public opinion, . . . it would be contrary to the public interest . . . to permit any degree of 'cross interest,' direct or indirect, in two or more stations in the same broadcast areas.")

the local market -- a concern not relevant to the cable horizontal limit.

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The discussion above demonstrates that an operational control attribution standard is preferable to standards that either attribute all influential interests or analyze such interests on a case-by-case basis. This conclusion is particularly warranted in the context of the cable horizontal limit because, as shown in the next section, the purpose of that limit can be met with less restrictive, less costly attribution thresholds.

2. The Underlying Purposes Of The Commission's Horizontal Ownership Limit Can Be Met With Less Restrictive Attribution Thresholds.

The Commission should adopt attribution criteria that capture only those interests necessary to effectuate the underlying purpose of the horizontal ownership limit.[76] As described above and noted in the attached CRA economic analysis, the broadcast attribution rules are intended to prevent firms from acquiring financial interests that may harm competition and diversity in both local (competition for viewers and advertisers) and national broadcast markets. CRA also notes generally that the most important of these horizontal concerns are not present in cable.[77]

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[76] Cf. Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752, 761 (6th Cir. 1995).

[77] CRA Attribution Analysis at 16-17.

The most important horizontal issue, the potential for reduced competition in output markets (subscribers and advertising), is irrelevant to cable because (as noted in Section II.B.) cable operators rarely compete with each other for subscribers. Thus, there is no possibility that acquiring an interest in another cable system will reduce the level of competition among the systems for subscribers or for local advertisers. As noted by CRA, "there is no risk that the investment of one cable system in another will result in higher prices to subscribers and advertisers as a consequence of the suppression of direct competition between the two."[78] For this reason, CRA concludes that the cable attribution rules should be more lenient than the broadcast rules.[79]

In mandating a limit on cable horizontal ownership, the Commission has sought to address two related concerns.[80] The first was that a cable operator could amass sufficient horizontal interests such that it could extract concessions from non-affiliated programmers in exchange for carriage, i.e., monopsony power. These concessions may include an ownership interest[81] or programming price reductions. Second, the Commission was concerned that a cable operator's horizontal concentration could allow it

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78 Id. at 17-18.

79 Id. at 18.

80 Id. at 4-5. For a discussion of Congress' intentions in enacting the cable horizontal limit obligation, see TCI's Horizontal Limit Comments at Section II.

81 Note, however, that any attempt by cable operators to extract an ownership interest in a programmer in return for carriage would violate the Act and the Commission's implementing rules. See 47 U.S.C. § 536(a)(1), 47 C.F.R. § 76.1301(a).

effectively to foreclose non-affiliated and rival programmers from access to subscribers, i.e., vertical foreclosure, and thereby impair diversity.[82] As explained more fully below, these concerns are not sufficient to justify retention of the current cable horizontal attribution rules.

National buying power (monopsony) and vertical foreclosure pose smaller competitive risks than downstream horizontal concerns, which as noted above, are not present in the cable industry. The effect of national monopsony or buyer power on consumers is ambiguous. In fact, it may benefit consumers, while possible negative effects are unlikely to harm consumers. This ambiguity counsels a more relaxed attribution standard than those currently applied to cable horizontal ownership.

On the positive side, buyer power can permit a cable operator to negotiate lower prices for programming. This benefits consumers, because the lower negotiated prices will likely be passed along to them as a reduced charge for cable service. As noted by CRA, "[b]ecause programming fees are typically denominated on a per-subscriber basis, one effect of lower programming fees is to reduce the marginal cost (i.e., the incremental per subscriber cost) of cable service. This effect gives cable operators incentives to reduce the price of cable service. It is important to recognize that this incentive exists even if the cable operator has market power in the delivery of video program service within

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82 See generally TCI's Horizontal Limit Comments which explore in depth this issue.

its service area, since even a monopolist has an incentive to pass-through some or all of any reduction in its marginal cost."[83]

Buyer power may, under certain circumstances, have adverse consumer effects if lower programming prices reduce a programmer's incentive to develop programming. This would occur if, among other things, the costs of producing programming of a given quality increased with each new programming service.[84] However, as CRA explains, "the history of program service entry and expansion suggests that program costs do not rise rapidly or at all as the number of services has increased. Thus, this type of monopsony power is unlikely to be of substantial competitive significance."[85]

Another possible national monopsony concern is that program quality will be reduced as a result of increased cable bargaining power. CRA explains that this concern too is largely misplaced. Indeed, when program quality considerations are important, horizontal ownership "may result in reduced incentives to bargain for a lower programming price."[86] Simply stated, partial ownership interests "mitigate incentives that cable operators have to exert monopsony power"[87] that would reduce program service quality.

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[83] See CRA Attribution Analysis at 18; see also Comments of CBS Corporation in MM Docket No. 98-35, supra, at 11 (broadcast station groups achieve efficiencies through the ability to purchase programming as a whole).

[84] CRA Attribution Analysis at 19.

[85] Id. at 20.

[86] Id. (emphasis in original).

[87] See id.

Even assuming, *arguendo*, that monopsony power is unambiguously harmful -- which as demonstrated previously, it is not -- even a large ownership interest in another cable operator may not have adverse competitive consequences. CRA provides a number of illustrative examples of these circumstances.[88] The monopsony examples demonstrate, among other things, that taking interests in excess of the current attribution rules will not result in what might be considered an unacceptable concentration level. These examples demonstrate that potentially influential interests do not raise issues of significant competitive harm.

Finally, because there are many alternative distribution outlets available, a cable operator's ability to exercise harmful monopsony power is substantially diminished.[89]

The Commission also has sought to ensure that cable MSOs could not achieve horizontal concentration levels sufficient to allow the exercise of market power in the vertical (programming) market. In requiring a limit on horizontal ownership, Congress did not intend to curb horizontal concentration in the cable industry per se, but only where horizontal concentration materially increases the risk of vertical foreclosure. At bottom, Congress feared that such market power could allow a cable operator to restrict unaffiliated programmers' access to video distribution outlets.[90]

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88 Id. at 21-30.

89 See id. at 20-21.

90 TCI's Horizontal Limit Comments at Section II.

There are two possible ways that a vertically integrated cable operator could engage in vertical foreclosure. First, such an operator could invest in a non-vertically integrated cable operator, and thereby increase the ability and incentive of the investing cable operator to deny access to both systems by rivals of its program service. If successful, this could weaken or eliminate rival program services, and the investing operator would be able to raise the price of its program services. Second, a cable operator could invest in a vertically integrated operator, and, as a result, the investing operator may have the ability and incentive to foreclose rivals to the acquired system's program services. If successful, the vertically-integrated operator could increase the price of its programming, and the investing operator will share in the higher profits to the extent of its financial interest (although it too must pay higher prices for these services).[91] As explained by CRA, neither of these circumstances is likely to occur.

The empirical evidence to date suggests that the likelihood of vertical foreclose is small. As explained by CRA, and addressed more fully in TCI's Comments in the Horizontal Ownership proceeding:

> the bulk of the empirical evidence indicates that vertically integrated cable operators do not disfavor non-pay program services in which they do not have ownership interests. In particular, carriage rates for these services by vertically integrated systems are generally not lower than those of systems that are not vertically integrated. Moreover, even where the carriage rates by vertically integrated operators are found to be lower, the differences are generally small

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91 CRA Attribution Analysis at 30.

> when compared either to the universe of cable subscribers or to the total number of subscribers with access to the service.[92]

Thus, notwithstanding ability or incentive, vertically-integrated cable operators are <u>not</u> engaging in vertical foreclosure.

Moreover, as CRA explains, "the ability of any cable operator to foreclose program services has likely diminished substantially over the past five years because of the availability and growth of DBS in particular."[93] In other words, if a cable operator attempts to deny access to a program service in which it has no interest, that service now has alternative outlets such as DBS. Thus, the ability to vertically foreclose is reduced.

Assuming *arguendo* that the incentive to foreclose is present, even a large financial interest will not significantly increase incentives to vertically foreclose. CRA has provided a series of vertical examples that illustrate that the incentive to engage in vertical foreclosure can be extremely low. This is because subscriber revenues are so important that if a cable operator loses less than one percent of its subscriber base, it is no longer profitable to foreclose rivals.[94]

In addition, as the economic literature indicates, there are substantial benefits associated with vertical integration, and vertical mergers generally benefit consumers. Financial interests

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[92] <u>Id.</u> at 31.

[93] <u>Id.</u>

[94] <u>Id.</u> at 34-38.

acquired by one cable operator in another can be beneficial when one or both of the cable operators also have programming interests. This is due to the efficiencies that accrue from the alignment of incentives between upstream or input suppliers and downstream purchasers.[95] For example, cable operators have an incentive to provide programming that consumers wish to view. If an operator is vertically integrated, and it has better information about programming preferences of its subscribers than would a stand-alone programmer, then vertical integration better aligns a programmer's production of programming with the preferences of subscribers for programming.

Finally, with regard to the Commission's concern about diversity, as demonstrated above, the number of channels alone promotes diversity. Moreover, ownership of programming has little bearing on carriage. That is, evidence suggests that cable operators do not disfavor non-affiliated programming.[96] In addition, the variety of non-cable outlets available for video programming,[97] as well as the must carry, program carriage, leased access and other specific requirements, ensure a diversity of viewpoints on cable systems. It simply is not possible for a cable operator, no matter how strongly motivated, to present a uniform political, cultural, or social perspective to its subscribers.

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95 Id. at 31-32.

96 Id. at 31.

97 See Comments of National Broadcasting Company, Inc. in MM Docket No. 98-35, supra, at 9 (noting that as new video providers increase, diversity will increase).

Moreover, cable firms inevitably are constrained by the realities of contemporary finance. Institutional investors and the professionals who manage them are concerned with, and closely monitor, the financial performance of the firms in which they invest. By and large, they are not sentimental about ideological concerns. This fact inherently constrains the ability of an MSO to take actions which may benefit a minority-shareholder at the expense of other shareholders. Investors will not tolerate actions designed to foreclose specific viewpoints or opinions merely for ideological purposes. For this reason, commonly-owned systems will be prevented from "slanting" their carriage of services to a particular viewpoint.[98]

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The previous analysis leads ineluctably to the conclusion that an operational control attribution standard is the most appropriate to implement the horizontal limit. Any other approach would sacrifice substantial benefits to avoid the potential for harm that is either minimal or nonexistent:

- as demonstrated by CRA, the risk that influential interests will harm competition through the exercise of monopsony or vertical foreclosure is small;
- the risk that influential interests will harm diversity is small because, among other factors, the number of MVPDs and programming networks have increased significantly, must carry, program carriage, and other affirmative behavioral restrictions ensure the carriage of a variety of viewpoints, and cable subscribers have more choices than with the traditional broadcast medium;

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98 See CRA Attribution Analysis at 39. This proposition applies with equal force to broadcasters.

- an overinclusive attribution threshold will foreclose beneficial ownership interests and impair potential efficiencies (e.g., access to capital and regional clustering); and

- the cost of a case-by-case approach to attribution will necessarily outweigh any minimal risk that competition or diversity will be harmed.

For these reasons, the Commission should find that partial interests that do not convey operational control are manifestly unlikely to implicate monopsony, vertical foreclosure or diversity concerns, and accordingly, should decline to attribute such interests.

D. Attribution Criteria Premised Upon Operational Control Will Promote MSO Efforts To Achieve Efficiencies Through Geographic Clustering And Localization Of System Management.

Technical application of the current attribution rules could seriously impair TCI's and other MSO's efforts to produce significant consumer benefits, realize various efficiencies, and enhance competition in telephony and high-speed data.

For example, over the past 18 months, TCI has entered into a series of transactions to create regional clusters that will enable TCI to fill in its current cable systems in markets such as Chicago, Denver, Portland, Dallas, San Francisco, Salt Lake City, and Central Michigan.[99] These more dense cable systems allow TCI

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[99] See Testimony of Leo J. Hindery, Jr., President, Tele-Communications, Inc. before the Senate Subcommittee on Antitrust, Business Rights, and Competition, Oct. 8, 1997, at 9 ("Clustering allows us to focus more keenly on the local needs of our customers and, at the same time, create larger, regional systems that can obtain the economies of scale and scope that are absolutely necessary to the provision of telephony and future interactive video and information services.") ("Oct. 8, 1997 Hindery Testimony").

to decentralize its operations and focus on more manageable and efficient regional units. This, in turn, brings decision-making down to the local level where TCI managers can better serve the needs and interests of their customers. For the same reasons, where one of TCI's systems was adjacent to an operator which had a deeper presence in that market, TCI has sought to create a joint venture and let the other operator manage the system. The benefits of these transactions are described more fully in TCI's Horizontal Limit Comments.[100] After all the transactions are completed, TCI expects to have reduced by approximately one-third the number of subscribers it currently manages.

Pursuant to the Commission's request in its Notice,[101] TCI provides below the following information regarding transactions it has consummated since January 1997 that have permitted it to realize efficiencies through the local and regional clustering of its cable systems. Due to the magnitude and complexity of the transactional information the Commission requested, TCI includes only those transactions involving more than 35,000 subscribers.[102] On April 15, 1998, TCI submitted press releases describing its transactions in an ex parte in MM Docket No. 92-264. TCI provides supplemental press releases as Appendix B to this filing.

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[100] TCI's Horizontal Limit Comments at Section III.

[101] Cable Attribution Notice at ¶ 16.

[102] Since January 1997, TCI has consummated approximately 20 transactions that include cable systems with 35,000 or less subscribers.

TCI has approximately 26 transactions pending which have not been consummated. They generally involve approximately 12 swaps, 7 joint ventures, 3 acquisitions, and 4 sales. TCI's goal is to complete the majority of these transactions by year-end 1998. Due to the sensitive nature of on-going negotiations, TCI cannot provide specific terms of these transaction at this time.

- **Adelphia**

On July 31, 1998, TCI contributed systems in Ohio, New York, and Pennsylvania (the "TCI Contributed Systems") and its partnership interests in US Cable of Evangola, L.P. and US Cable of Tri-County, Ltd., which owned and operated cable systems in New York (the "US Cable Partnerships"), subject to debt in the amount of approximately $229 million, to a new limited partnership, Parnassos, L.P., in exchange for a 33.33% general partnership interest. Adelphia Communications Corp. also contributed certain systems, its partnership interests in the US Cable Partnerships, and the Empire Sports Network, subject to certain debt, to the limited partnership, in exchange for a 66.57% general partnership interest and a .10% limited partnership interest in Parnassos, L.P. Parnassos, L.P. passes approximately 700,000 homes and has approximately 471,000 subscribers. Of those subscribers, approximately 169,000 were served by the TCI Contributed Systems.

The partnership is for a 20-year term. Adelphia Cablevision Inc. manages the cable systems for a fee. There is a five member Board of Representatives. Three members are appointed by Adelphia, while two members are appointed by TCI. Unanimous consent of the board is required for the following actions: purchase/sale of assets, issuance of equity interests, consolidation, merger, additional capital calls, among other major decisions regarding the limited partnership.

Through an affiliate, TCI provides programming to the limited partnership for an administrative fee.

- **Cablevision**

On March 4, 1998, subsidiaries of TCI contributed systems in the New York/New Jersey metropolitan area (approximately 830,000 subscribers) to Cablevision in exchange for a 33% equity stake in Cablevision. Cablevision also assumed approximately $669 million of TCI's debt. This transaction creates operational efficiencies by clustering the TCI systems with Cablevision's system in the New York metropolitan area. Cablevision now serves approximately 2.5 million in the New York metropolitan area and 3.6 million subscribers nationwide.

TCI holds only Class A stock in Cablevision, each share of which has only 1/10th of the voting power of the Class B stock held by the Dolan family. Thus, TCI's voting interest in Cablevision is only 8.9%. By contrast, Cablevision's chairman Charles F. Dolan retains control over 44.7% of the total voting power of the Common Stock, and Dolan family members hold an additional 36.8% of the total voting power of all classes of the Common Stock. TCI's stock is voted on a pro rata basis for the election of directors entitled to be elected by holders of Class A common stock and any increase in authorized shares. There is no provision which would give TCI the right to gain a majority shareholder position in Cablevision. However, TCI does have typical minority shareholder protections to prevent the dilution of its interest. TCI generally has the right to nominate and, pursuant to a voting agreement with the Dolan group, to have elected, two directors, and the two directors nominated by TCI will be appointed to the Special Committee of the Board of Directors that must approve certain transactions involving other Dolan interests.

By virtue of its interest in Cablevision, TCI has a commensurate interest in Rainbow Media whose programming networks include AMC and Bravo. (Cablevision owns a 75% share of Rainbow Media, while NBC Cable owns the remaining 25% share.) Cablevision controls Rainbow and its programming, not TCI.

- **Cox Communications, Inc. (Central, Great Lakes, Southeast)**

Effective January 1997, TCI exchanged cable systems with Cox Communications, Inc. in several states (mainly in the Central area of the U.S. (including Scottsdale, Arizona), the Great Lakes, and the Southeast.) (TCI gained approximately 15,000 subscribers.) However, no interest was retained by either party in the systems exchanged.

- **Cox Communications, Inc. (Tucson, Arizona)**

As of June 15, 1998, TCI sold its systems in Tucson and Sierra Vista, Arizona to Cox Communications, Inc. (approximately 120,000 subscribers). TCI did not retain any interest in the systems.

- **Fisher Communications**

In January 1998, TCI and Fisher Communications, L.L.C. each contributed certain systems in Nevada, Utah, Arizona, Missouri, and Oklahoma to a new limited liability company, Peak Cablevision, L.L.C. In addition, the new limited liability company assumed approximately $93 million in debt. TCI will have a 66.7% ownership interest, and Fisher will have a 33.3% interest in Peak Cablevision.

Fisher will manage Peak Cablevision (which passes approximately 179,000 homes and has approximately 112,000 subscribers) for a fee. Peak Cablevision is governed by a committee made up of four members. Both TCI and Fisher appoint two members each. All decisions are made by majority vote, except unanimous approval is required for budgets, acquisition or disposal of major assets, as well as other major decisions. After seven years, either TCI or Fisher may initiate a buyout of the other's interest in Peak Cablevision, and the non-electing member may elect to be neither a buyer or seller, but instead cause Peak Cablevision to sell all of its assets or distribute its assets to the members.

Through an affiliate, TCI provides programming to Peak Cablevision for an administrative fee.

- **InterMedia VI**

On April 30, 1998, TCI contributed systems in Kentucky to a new limited partnership, InterMedia Capital Partners VI, L.P. The new partnership also assumed approximately $825 million of TCI's debt. (There are approximately 646,000 homes passed and approximately 425,000 basic subscribers.) InterMedia Capital Management VI, L.L.C. is the general partner. The Blackstone Group, InterMedia Capital Management VI, L.P., TCI and Leo Hindery are limited partners. TCI benefits from this transaction by deleveraging some of its debt and transferring management responsibility to InterMedia, the most proficient manager in that region of the country. The limited partnership has a 14-year term.

InterMedia Capital Management manages the new partnership for a fee. The limited partners take part in approving the annual operating plan and capital budget, and approval of 66.66% of the limited partners is required for various significant actions, including the sale of assets, dissolution of the partnership, or the extension of the partnership, among others. Otherwise, the limited partners are prohibited from taking part in the control, management or operation of the limited partnership.

InterMedia has an advisory committee consisting of up to three TCI representatives (including Hindery), and three representatives each from Blackstone and InterMedia Capital Management. InterMedia Capital Management administers the advisory committee. While the advisory committee consults and advises the partnership, it is prohibited from controlling the partnership's business.

After five years, either TCI or Blackstone can sell its interest after offering it first to the other, and following a complicated procedure, which in some circumstances may lead to the sale of all the partnership's assets or a public offering of ownership interests in the partnership.